

RECEIVED

Before the
Federal Communications Commission
Washington, D.C. 20554

OCT 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Reallocation of Television Channels)	ET Docket No. 97-157
60-69, the 746-806 Band)	

TO: The Commission

**REPLY COMMENTS ON THE NOTICE OF PROPOSED RULE MAKING
SUBMITTED BY
THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.
AND THE NATIONAL ASSOCIATION OF BROADCASTERS**

The Association for Maximum Service Television, Inc. ("MSTV")^{1/} and the National Association of Broadcasters ("NAB")^{2/} submit these reply comments on the Commission's Notice of Proposed Rulemaking in the above-captioned docket (adopted July 9, 1997, rel. July 10, 1997) (the "Notice") which proposes to reallocate the 746-806 MHz band, currently comprising television channels 60-69. In our initial comments, we recommended modest changes to the Commission's proposal to reallocate the 746-806 MHz band so as to more fully achieve Congressional objectives and wise spectrum management.^{3/} We submit these reply comments specifically to reaffirm our request

^{1/} MSTV represents more than 330 local television stations on technical issues relating to the analog and digital television services and helped develop the methodology for allotting and assigning DTV channels.

^{2/} NAB is a non-profit, incorporated association of television and radio stations and broadcast networks which serves and represents the American broadcast industry.

^{3/} Comments on the Notice of Proposed Rule Making Submitted by the Association for Maximum Service Television, Inc. and the National Association of Broadcasters, ET Docket No. 97-157 (September 15, 1997) ("Initial Comments").

No. of Copies rec'd 0+8
List A B C D E

that the Commission allocate two contiguous blocks of spectrum -- one for public safety and one for other uses -- in order to facilitate its most efficient use, to urge the Commission to retain a flexible allocation for the 36 MHz not reserved for public safety, and to respond specifically to alternative proposals set forth by other parties in their initial comments.

I. THE COMMISSION SHOULD RETAIN A FLEXIBLE ALLOCATION FOR THE 36 MHZ NOT RESERVED FOR PUBLIC SAFETY.

A number of commenters^{4/} representing public safety and land mobile interests opposed the Commission's proposal to allocate the 36 MHz in the 746-806 MHz band for the fixed, mobile, and broadcasting services. These commenters generally urged the Commission to restrict or exclude broadcasting services from future use of this spectrum. Such a restrictive allocation is unnecessary to protect the public safety services and would undermine the congressional mandate to maximize the productive use of "refarmed" spectrum. The Commission should reject this overly-restrictive allocation for the spectrum.

The Commission's proposed allocation of the 36 MHz for flexible use will promote the public interest and is in keeping with congressional objectives^{5/} and

^{4/} See Comments submitted by the Association of Public-Safety Communications Officials-International, Inc. (APCO); the State of Florida; Cellular Telecommunications Industry Association (CTIA); National Public Safety Telecommunications Council (NPSTC); and National League of Cities; National Criminal Justice Association; National Coordinating Council of Emergency Services; California League of Cities and City of New York (ET Docket No. 97-157 (September 15, 1997)).

^{5/} See Balanced Budget Act of 1997, P.L. No. 105-33, § 3005 (adding a new subsection (y) to section 303 to authorize the FCC to allocate spectrum for flexible use) (hereinafter the "Budget Act").

efficient spectrum policy, as they bear on this particular spectrum block. In a January 1997 report on spectrum management, the Commission staff touted the importance of flexibility in spectrum management.^{6/} Specifically, the report noted the benefits of granting licensees the flexibility to determine what technologies they will use and "both the amount of spectrum they occupy and the geographic area they serve."^{7/} MSTV and NAB continue to believe that the Commission must not substitute the goal of "flexibility" for its statutory obligation to allocate spectrum to particular uses in the public interest. However, where as here there will be a flexible allocation, there is no reason to arbitrarily exclude one from an array of services.

Any type of flexible allocation will work better if the Commission adopted the alternative allocation of two contiguous blocks of spectrum proposed in our initial comments, and in the comments filed by the National Translator Association and KSLs, Inc.^{8/} In our comments, we noted that allocating the spectrum in the 60-69 band in two contiguous blocks -- 24 MHz at channels 66-69 (782-806 MHz) to public safety and 36 MHz at channels 60-65 (746-782 MHz) for other services -- would improve spectrum efficiency in both spectrum blocks, reduce interference to existing television operations, increase flexibility for DTV operations and increase the utility of the 36 MHz not allocated to public safety. We explained that this alternative allocation would provide

^{6/} Rosston, Gregory L. and Steinberg, Jeffrey S., Using Market-Based Spectrum Policy to Promote the Public Interest (Jan. 1997).

^{7/} Id. at 11.

^{8/} See Comments submitted by the National Translator Association (NTA) and KSLs, Inc. in ET Docket No. 97-157 (September 15, 1997).

public safety services with the same amount of spectrum as the Commission's proposed allocation and in just as useable a form.^{9/} Moreover, the allocation of 36 MHz of contiguous spectrum would make it suitable for broadband video services as well as narrowband services such as land mobile and other applications and therefore markedly increase the value of the spectrum for which commercial users will ultimately bid. As shown in our comments, a block allocation of 36 MHz for the fixed, mobile and broadcasting services would promote the most efficient use of the spectrum, while assuring spectrum-efficient use of the 24 MHz designated for public safety operations.

II. THE COMMISSION MUST SAFEGUARD BROADCASTERS' RIGHT TO OPERATE IN THE 60-69 BAND UNTIL THE END OF THE TRANSITION.

Four entities^{10/} representing public safety interests in the state of California urged the Commission to take certain steps to speed broadcasters' departure from the 746-806 MHz band. While we understand the concerns expressed by the California Public Safety Association and other organizations, we have repeatedly cautioned the Commission about the limited availability of spectrum for public safety in

^{9/} In its comments, Motorola advocates two separate public safety blocks to achieve 30 MHz separation for public safety/land mobile transmit/receive operations. Such separation, however, is not needed for these operations. See Initial Comments at 6. While Motorola may find a greater separation desirable, MSTV and NAB suggest that the advantages of a single block allocation for public safety in terms of the value and utility of the spectrum far outweigh Motorola's desires in this regard. Id. at 3-7.

^{10/} See Comments submitted by the California Public-Safety Radio Association, A Chapter of the Association of Public-Safety Communications Officials International (APCO); the City of Long Beach, California; the County of Los Angeles; and the State of California (ET Docket No. 97-157 (September 15, 1997)).

the major markets and urged the Commission to find other alternatives.^{11/} The Commission should resolutely resist any steps now that would diminish the protection to which channel 60-69 NTSC and DTV licensees are entitled throughout the transition.

A. Congress Provided That Broadcasters Would Be Protected Throughout The Transition.

Congress mandated the allocation of 24 MHz of spectrum in the channel 60-69 band for public safety needs, but it also mandated a quick transition to digital television that avoids interfering with the public's free, over-the-air television service. As noted in our initial comments, channels 60-69 will play an important role in that transition and will be necessary for the survival of the existing television service and the viability of the new DTV service.^{12/} The Budget Act ensures that channels 60-69 will be available for this critical purpose by requiring the Commission to "establish any additional technical restrictions [on public safety use] necessary to protect full-service analog television service and digital television service during a transition to digital television service."^{13/} The Commission also has promised that "all existing analog and DTV full service broadcast operations on channels 60-69 will be fully protected during

^{11/} See Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking, MM Docket No. 87-268, at 41-42 (November 22, 1996) (citing Report by MIT MacDonald Professor of Economics, Dr. Jerry A. Hausman, attached as Appendix D thereto, in which Professor Hausman notes that "early recovery of smaller amounts of non-contiguous spectrum is likely to be a less economically efficient solution than later recovery of larger blocks of contiguous spectrum").

^{12/} Thus, somewhat greater recourse to channels 60 through 69 will be necessary to ameliorate the DTV-to-DTV adjacent channel interference problem that MSTV pointed out in its Comments On and Opposition To Petitions for Reconsideration of the Fifth and Sixth Report and Orders, MM Docket No. 87-268 (July 18, 1997).

^{13/} Budget Act at § 3004 (new section 337(d)(2) of the Communications Act).

the transition, which is targeted for completion in the year 2006."^{14/} Thus, any efforts to hasten the departure of television from channels 60-69 (which already runs the risk of being unrealistically premature) must be rejected because they will inevitably have the effect of reducing the protections guaranteed to NTSC and DTV broadcasters until the end of the transition.

B. The Commission Must Adopt A Policy That Reflects The Balance Congress Struck Between The Spectrum Needs Of Public Safety Agencies And The Orderly Transition To Digital Television Services.

The Commission and the National Telecommunications and Information Administration established the Public Safety Wireless Advisory Committee ("PSWAC") in 1995, to study and provide recommendations regarding the wireless communication needs of public service agencies throughout the country. In its Final Report to the Commission dated September 11, 1996, PSWAC noted that there was a spectrum shortage for public safety operations, particularly in highly congested urban areas.^{15/} Expressing concern about population growth and demographic changes,^{16/} PSWAC requested additional spectrum for public safety operations, including an allocation of 25

^{14/} Notice, ¶ 6, citing Sixth Report and Order, MM Docket No. 87-268 (rel. April 21, 1997) ¶ 80 and Fifth Report and Order, MM Docket No. 87-268 (rel. April 21, 1997) ¶¶ 99-100. See also Notice, ¶¶ 17 and 21.

^{15/} See Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration (Sept. 11, 1996) ("PSWAC Report"), at 2.

^{16/} Id. at 20.

MHz in the channel 60-69 range in five years.^{17/} At the same time, PSWAC encouraged the public safety community to explore and develop technologies and procedures for more efficiently utilizing the spectrum allocated to public safety services.^{18/}

We are sympathetic to the challenges faced by public safety entities in the most congested markets, but the plain truth is that there is no perfect solution for the spectrum shortage facing both public safety and broadcasters in these markets. In the congested southern California market, for example, the public faces potentially massive television service losses as a result of market congestion and the Commission's efforts to restrict use of DTV channels 60-69 during the transition. Faced with the competing spectrum needs of public safety organizations and broadcasters, Congress struck a balance by requiring the Commission to allocate an additional 24 MHz of spectrum in the channel 60-69 band to public safety, while safeguarding the interests of broadcasters operating in this band during the transition. The Commission must respect the balance Congress struck to ensure the orderly transition of broadcasters from analog to digital service.

^{17/} Id. at 3, 21. PSWAC also argued strenuously for block allocations, arguing that narrow banding does not provide public safety agencies with the necessary flexibility to use spectrally efficient technology. See id. at 23, 52.

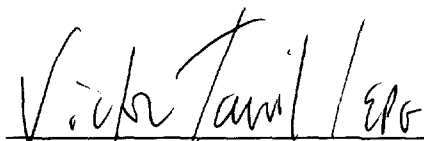
^{18/} See id. at 19, 27.

**III. THE COMMISSION SHOULD ACCOMMODATE LPTVS AND
TRANSLATORS TO THE EXTENT POSSIBLE USING CHANNELS 60-69.**

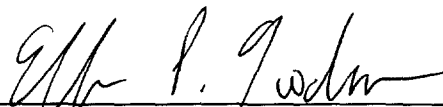
Translators and LPTVs provide an important service to the public. We therefore support the Commission's efforts to accommodate LPTVs and translators to the extent feasible using channels 60-69. We encourage the Commission to use channels 60-69 to mitigate the impact of the DTV transition on low power stations, consistent with their secondary status.

Respectfully submitted,

**ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.**



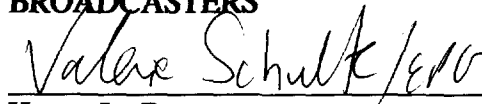
Victor Tawil
Senior Vice President
Association for Maximum
Service Television, Inc.
1776 Massachusetts Avenue, NW
Suite 310
Washington, DC 20036
Phone: (202) 861-0344
Fax: (202) 861-0342



Jonathan D. Blake
Ellen P. Goodman
Jennifer A. Johnson
Covington & Burling
1201 Pennsylvania Avenue, NW
Post Office Box 7566
Washington, DC 20044-7566
Phone: (202) 662-6000
Fax: (202) 662-6291

Its Attorneys

**NATIONAL ASSOCIATION OF
BROADCASTERS**



Henry L. Baumann
Valerie Schulte
1771 N Street, N.W.
Washington, DC 20036
Phone: (202) 429-5458
Fax: (202) 429-3526

October 14, 1997